P.R. No. 3-21/06
Presented by Shri B.N. Nande
dated 26/6/06

C.S. 1001 — 3

IN HE HIGH COURT OF JUDICATURE,AT BILASPUR CHHATTISGARH

WRIT PETITION NO.3027/2006

PETIIONER :-Bhuneswar S/o Ranglal Mali, Sarpanch GramPanchayat Pendravan Tehsil Bilaigarh Disrict Raipur (C.G).

VERSUS

RESPONDENTS :- 1.Anant Kumar S/o Bahali Ram

2.Laxman S/o Jagannathiya

3.SpecifiedOfficer/SubDivisionalOfficer (Revenue) Bilaigarh Distt. Raipur(C.G)

4. Additional Collector (Revenue) Balodabazar Distt. Raipur (C.G).

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26/6/06

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTIUION OF INDIA

XI-HC-78

OH-IX

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ~~WPC 3027/06~~ WP-M-3027/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	27.6.2006 Shri S.N. Nande, Advocate for the petitioner. Shri Vinay Pandey, Advocate for respondent Nos.1 & 2 on caveat. Shri Satish Gupta, Deputy Government Advocate for respondent No.3 & 4/ State. As agreed by learned counsel for the respondents, the matter is being disposed of at the admission stage itself, as the enquiry conducted by the Sub Divisional Officer i.e. Prescribed Authority is not in consonance with the principles of natural justice. I have heard learned counsel for the parties. By this petition the petitioner has questioned the legality, propriety and correctness of the order dated 15.6.2006 (Annexure P-1) passed by the Additional Collector, Baloda Bazar in Appeal No.68-A-89(A)/2005-06 whereby the Additional Collector partly allowing the appeal passed the order under Section 40 (1) (a)(c) of the Panchayat Raj Adhiniyam, 1993 for removal of the petitioner from the post of Sarpanch, Gram Panchayat Pendra Van, on the ground of proved misconduct and further held that continuation of the petitioner on the post is not in the public interest. The petitioner has also questioned the order passed by the Sub Divisional Officer i.e. Prescribed Authority dated 9.12.2005 (Annexure P-2) whereby the petitioner along with other persons have been held guilty for preparing fake	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

muster roll in connection with the execution work of deepening the village pond by entering the names of five persons and showing payment to them to the tune of Rs.2,728/-, whereas, in fact those persons had never worked and no payment was made to them in connection with the said work.

Brief facts necessary for the disposal of this petition are that the petitioner was elected as Sarpanch of Gram Panchayat Pendra Van in the panchayat elections held in the year 2004. Respondents No.1 & 2 herein made a complaint regarding misconduct of the petitioner before the prescribed authority i.e. S.D.O., Bilaigarh, on which a case No.11A/89(a) year 2004-05 was registered and the complaint was sent for enquiry to the Naib Tehsildar, Bhatgaon. After conducting the preliminary enquiry into the allegations of the complaint, the Naib Tehsildar made a report to the S.D.O. to the effect that only charge regarding preparing of fake muster roll in the name of five persons namely Gasram, Rakesh, Kamlesh, Kartik Ram and Baharate has been found proved. The S.D.O. received the report on 14.10.2005, a show cause notice was issued to the petitioner herein on 17.10.2005 and on 5.11.2005 copy of report was given to the petitioner. Thereafter the petitioner submitted reply of the said notice. As per order sheet dated 14.11.2005 the matter was fixed for evidence of respondent No.1 & 2 and thereafter, the matter was continued and it was not taken up for

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

hearing on account of absence of the prescribed authority, ultimately on 8.12.2005 it was mentioned that the SDO is on tour. However, on the same day, later on the matter was taken up by the SDO and it is mentioned that after returning from the camp at Sarsiva it was enquired from the complainants that whether they want to adduce evidence, on which they submitted that they do not want to adduce evidence and evidence taken earlier may be considered. Therefore, the matter was fixed for 9.12.2005 on which date the impugned order was passed by the S.D.O.

Perusal of above order sheets shows that after reply of the show cause notice, in the first instance, the SDO fixed the matter for evidence and ultimately on 8.12.2005 the complainants stated that they do not want to adduce the evidence, therefore, virtually no evidence was recorded in the enquiry by the SDO and the finding has been recorded based on the evidence recorded by the Naib Tehsildar during preliminary enquiry and those statements of witnesses were recorded in absence of the petitioner herein. As such, he had no opportunity to cross-examine those witnesses in order to ascertain the veracity of the statements made by those witnesses. Similarly, no opportunity was given to the petitioner herein to adduce evidence in order to rebut the charges and the order impugned was passed by the SDO virtually without recording the evidence. Therefore, on this count only the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - ५ -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

enquiry conducted by the SDO under Section 40 of the Act of 1993 stands vitiated, as the principles of natural justice have been violated, therefore, the appellate order as well as order passed by the SDO are liable to be quashed.

Consequently, both the orders are hereby quashed. However, the S.D.O. shall be at liberty to conduct the enquiry afresh by giving opportunity to the complainants or the department to adduce evidence and if such evidence is adduced then the petitioner herein shall be entitled to cross-examine those witnesses and thereafter opportunity shall be given to the petitioner herein to adduce evidence in support of his defence and thereafter after hearing the parties in the matter the SDO is supposed to pass the order in accordance with law.

With the directions aforesaid, the petition stands disposed of.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge